IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION

COMPANY PETITION NO.607 OF 2004

In the matter of Sec.434
of the Companies Act, 1956

And

In the matter of M/s.
RMS Automation Systems
P.Ltd.

M/s.Enol Ventures P.Ltd. .. Petitioners

Shri J.Sen i/b M/s.Federal and Rashmikant for the petitioners

Shri Amit Jamsandekar i/b DH Law Associates for the company

CORAM: S.U. KAMDAR, J.

DATE : 1ST APRIL, 2005

P.C. :

1. The present petition is filed on the basis of memorandum of understanding executed between the parties on 12.1.01. Under the said M.O.U. it has been interalia provided that a sum of Rs.1,29,000/- is payable and the instalments are stipulated in clause 2 of the said M.O.U. Under clause 3 it was further provided that interest to be paid @ 18% incase of delay in payment. Admittedly there were defaults between the parties and therefore the proceedings were initiated by

way of Company Petition being C.P.No.873 of 2002. By an order dt.5.12.02 passed in the said company petition it is inter alia provided that a company should make payment of Rs.60,00,000/-. It is undoubtedly provided in the said order that the said payment shall be made by the respondents to the petitioners within a period of six months from today and subject to the final orders passed in the said company petition.

2. It seems there were defaults in making payments. Various proceedings including contempt petition were taken out and ultimately claims are settled between the parties. Consent minutes of order was obtained by the parties in C.P. No.873 of 2002. The said consent minutes of order dt.15.09.03 interalia provides that the respondent company has handed over three demand drafts in the aggregate sum of Rs.20,00,000/- in favour of the petitioner. Petitioners also had liberty to withdraw Rs.40,00,000/- lacs deposited by respondent company in court together with interest accrued thereon. It was further provided in clause 3 that a sum of Rs.5 lacs has been paid by respondent to petitioner on 1.11.02. With this order the company petition and company applications are

disposed of with no order as to costs.

3. Petitioner has now issued fresh statutory notice dt.28.1.2004 for the recovery of further amount under the said MOU dt.12.1.01. It is claimed that the respondent company is indebted to the petitioners under the said MOU for Rs.94,92,493/- because of non-payment of further instalments under the said MOU. This claim has been resisted by respondent company. It has been contended by the respondent company that they are not liable to make payment of any amount over and above 60 lacs as settled in C.P.No. 873/2002.

4. The said MOU was a subject matter of the aforesaid company petition no.873 of 2002 and parties have settled their claims in the said petition. The said petition is finally disposed of. Looking at the orders passed by this court, it cannot be said that the defence raised by respondent company is not bonafide. In view of the bonafide defence raised in the present petition, petition is accordingly dismissed. There shall be no order as to costs.